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AMERICAN DIPLOMACY AND THE FINANCING OF CHINA

BY GEORGE A. FINCH

Secretary of the Board of Editors

In his last annual message President Taft thus described the diplomacy of his administration: "The diplomacy of the present administration has sought to respond to modern ideas of commercial intercourse. This policy has been characterized as substituting dollars for bullets. . . . It is an effort frankly directed to the increase of American trade upon the axiomatic principle that the Government of the United States shall extend all proper support to every legitimate and beneficial American enterprise abroad."¹

His official experience in the Philippine Islands had naturally given Mr. Taft a wide knowledge of Oriental affairs and his strong feelings on the subject of American participation in them were indicated in his inaugural address of March 4, 1909 where, as a reason for advising against the reduction of the expenses of the Army and Navy, he said: "In the international controversies that are likely to arise in the Orient growing out of the question of the open door and other issues the United States can maintain her interests intact and can secure respect for her just demands. She will not be able to do so, however, if it is understood that she never intends to back up her assertion of right and her defense of her interest by anything but mere verbal protest and diplomatic note."²

Thus holding the belief that the United States would be justified in resorting to force if necessary to keep open the door of equal commercial opportunity for its citizens in China, it was logical for Mr. Taft to justify at the close of his administration as a policy which had "substituted dollars for bullets" the activities of the State Department in behalf of American enterprise in China which had become so intensified as to become popularly characterized as "dollar diplomacy." That diplomacy, it is believed, represents the maximum point to which diplomatic assistance to private investments abroad has been extended by the American Government. It will therefore be taken as a starting point for this outline, which will briefly cover also the diplomacy before that time and of the present time.

The opportunity for the application of Mr. Taft's views occurred soon after he assumed office. In May 1909 the press reported an understanding between English, French and German financial groups for a loan

¹Congressional Record, Vol. 49, Part I, p. 9.

²Congressional Record, Vol. 44, Part I, p. 3.

to China for the proposed Hankow-Szechuen Railway, which later became known as the Hukuang Railway Loan. Secretary of State Knox immediately applied by cable to the Chinese Government for the admission of American capital to participation in the loan,³ and the State Department requested certain American bankers to take a share in the loan.⁴ The diplomatic efforts of the State Department at Peking proved unsuccessful,⁵ whereupon President Taft sent a direct communication to Prince Chun, Regent of the Chinese Empire, in which the President stated that he had "an intense personal interest in making the use of American capital in the development of China an instrument for the promotion of the welfare of China, and an increase in her material prosperity without entanglements or creating embarrassments affecting the growth of her independent political power and the preservation of her territorial integrity."⁶ The personal interposition of President Taft in the negotiations resulted in the admission of America's equal participation in the loan. To Congress President Taft justified this unique and vigorous exercise of diplomatic pressure upon China in his annual message of December 7, 1909, on the ground that "this railroad loan represented a practical and real application of the open door policy" as well as because of its relation to the currency reform which China undertook in certain treaties of 1903.

In pursuance of the same policy the State Department in 1910 and 1911 assisted in the negotiation of a loan to China with which to inaugurate the new currency system, which, because of the inclusion of Russia and Belgium, became known as the Six Power Loan or Sextuple Consortium. This loan, the President explained, was originally to be solely an American enterprise, but upon the urging of the American Government, the Chinese Government admitted to participation in it the associates of the American group in the Hukuang loan.

At the end of his administration, President Taft thus defended and appraised the foregoing policy in China:

In China the policy of encouraging financial investment to enable that country to help itself has had the result of giving new life and prac-

³Foreign Relations of the United States, 1909, p. 144.

⁴"The American group, consisting of J. P. Morgan and Company, Kuhn, Loeb and Company, the First National Bank, and the National City Bank, was formed in the spring of 1909 upon the expressed desire of the Department of State that a financial group be organized to take up the participation to which American capital was entitled in the Hukuang Railway loan agreement then under negotiation by the British, French and German banking groups." (Statement by the American group, March 19, 1913, this JOURNAL, Vol. 7, p. 340.)

⁵The loan had been in course of negotiation for several years and was on the point of being finally concluded when the State Department applied for admission of American capital. The foreign bankers and the Chinese director-general of the railway objected to the delay which would be involved in reopening the negotiations to admit American participation. (Foreign Relations, 1909, pp. 144-178.)

⁶Foreign Relations, 1909, p. 178.

tical application to the open-door policy. The consistent purpose of the present administration has been to encourage the use of American capital in the development of China by the promotion of those essential reforms to which China is pledged by treaties with the United States and other powers. The hypothecation to foreign bankers in connection with certain industrial enterprises, such as the Hukuang railways, of the national revenues upon which these reforms depended, led the Department of State early in the administration to demand for American citizens participation in such enterprises, in order that the United States might have equal rights and an equal voice in all questions pertaining to the disposition of the public revenues concerned. The same policy of promoting international accord among the powers having similar treaty rights as ourselves in the matters of reform, which could not be put into practical effect without the common consent of all, was likewise adopted in the case of the loan desired by China for the reform of its currency. The principle of international cooperation in matters of common interest upon which our policy had already been based in all of the above instances has admittedly been a great factor in that concert of the powers which has been so happily conspicuous during the perilous period of transition through which the great Chinese nation has been passing.⁷

It will be well at this point to go back and consider what had been the attitude of the American Government towards assisting and protecting American investors in China previous to the so-called "dollar diplomacy." In an instruction to Mr. Denby on December 19, 1896, Secretary of State Olney stated, "You should not assume directly or impliedly in the name of this government any responsibility for, or guaranty of, any American commercial or industrial enterprise trying to establish itself in China," but that Mr. Denby should use his "personal and official influence and lend all proper countenance to secure to reputable representatives of such concerns the same facilities for submitting proposals, tendering bids, or obtaining contracts as are enjoyed by any other foreign commercial enterprise in the country. . . . Broadly speaking, you should employ all proper methods for the extension of American commercial interests in China, while refraining from advocating the projects of any one firm to the exclusion of others."⁸

A case in point was presented to the Department of State in August 1898. On the 19th of that month a copy of a contract between the Chinese Minister at Washington, acting on behalf of his Government, and the American-China Development Company was sent to the Department with the request that the Department give notice to the United States legation and consulates in China that the representatives of the company charged with carrying out the provisions of the contract "shall have recognition and protection in the performance of their duties" and that the charge of the revenues and property assigned to the loan under contract "will be

⁷Annual message, Dec. 3, 1912, Congressional Record, Vol. 49, Part I, p. 9.

⁸Foreign Relations, 1897, p. 56.

noted by this government, which will uphold the contract as a binding engagement upon the Imperial Chinese Government." In his reply of August 24, 1898, Secretary of State Day informed the company "that the Department is unable to give you such a letter as you request. While the Government of the United States is always ready to enforce the just rights of its citizens abroad, it has always declined to become the guarantors of their contracts with foreign governments. As a rule, it has declined, where such a contract was alleged to have been violated by the foreign government, to interfere beyond the exercise of good offices. This being so, still less can it assume beforehand to guarantee the execution of the contract." In its application the company had stated that the English investors will have "the usual recognition" from the British Foreign Office substantially in the form requested by the company from the Department of State. In answer to this statement, Mr. Day said: "The British Crown, which exercises the executive power in that country, possesses both the war-making power and the treaty-making power, and is therefore authorized, in matters involving relations with foreign countries, to give guarantees and to enter into engagements which the executive of the United States would not alone be competent to assume."⁹

On October 21, 1905, the Department instructed the Legation at Peking that it might forward without comment to the Chinese Foreign Office the applications of reputable American citizens for privileges and concessions.¹⁰

The actions of the Department in the period from 1909 to 1912 went far beyond, and indeed contravened the foregoing expressions of previous policy. The official representations made by Secretary of State Knox and the personal appeal of President Taft made the Government of the United States virtually a party to the application for the Hukuang Railway Loan. The initiative of the State Department in the formation of the American group to participate in the loan made the Government practically a sponsor for the actions of that group in China. Although nothing is directly contained in the published correspondence regarding the amount and kind of protection which the Department was to give to the American investors in case of a default on the part of China, the implication is unavoidable that the maximum amount of protection of which the executive was capable would be extended in the case of both the Hukuang Railway Loan and the Currency Reform Loan. Any other inference would not be fair to President Taft and Secretary Knox who were officially responsible for American participation in both transactions. Such a guarantee of the execution of a contract was expressly refused, as above pointed

⁹Moore, *International Law Digest*, Vol. VI, p. 288.

¹⁰See despatch of July 11, 1913, from Mr. Williams, Chargé at Peking, printed in *Foreign Relations*, 1913, p. 186.

out, by Secretary of State Day in his reply to the American-China Development Company in 1898. He was unwilling to assure protection beyond the exercise of good offices. Citing a long list of Secretaries of State from Secretary Forsyth in 1834 to Secretary Hay in 1899, Dr. John Bassett Moore states: "It is not usual for the Government of the United States to interfere, except by its good offices, for the prosecution of claims founded on contracts with foreign governments."¹¹ Lack of authority on the part of the Executive was given by Secretary of State Marcy as the reason for the rule in an instruction to the American Minister to Peru on May 24, 1855. He said: "It does not comport with the dignity of any Government to make a demand upon another which might not ultimately, on its face, warrant a resort to force for the purpose of compelling a compliance with it. Such a course can not, under this Government, be adopted without authority from Congress, and it is almost impossible to imagine any contract or any circumstances attending the infraction of one by a foreign government which would induce Congress to confer such an authority upon the President."¹² Other reasons in justification of the rule were given by Mr. Taft's predecessor in office. President Roosevelt, in a message to the Senate, February 15, 1905, made the following statement:

Except for arbitrary wrong, done or sanctioned by superior authority, to persons or to vested property rights, the United States Government, following its traditional usage in such cases, aims to go no further than the mere use of its good offices, a measure which frequently proves ineffective. On the other hand, there are governments which do sometimes take energetic action for the protection of their subjects in the enforcement of merely contractual claims, and thereupon American concessionaires, supported by powerful influences, make loud appeal to the United States Government in similar cases for similar action. They complain that in the actual posture of affairs their valuable properties are practically confiscated, that American enterprise is paralyzed, and that unless they are fully protected, even by enforcement of their merely contractual rights, it means the abandonment to the subjects of other governments of the interests of American trade and commerce through the sacrifice of their investments. . . . Thus the attempted solution of the complex problem by the ordinary methods of diplomacy reacts injuriously upon the United States Government itself, and in a measure paralyzes the action of the Executive in the direction of a sound and consistent policy.¹³

It is evident, however, that the Hukuang Railway Loan and the Currency Reform Loan to China were not regarded as ordinary contracts between private American citizens and a foreign government. President Taft regarded the group of American bankers as "the indispensable instrumentality" for carrying out a broad policy of great national interest,¹⁴

¹¹ Moore, *International Law Digest*, Vol. VI, p. 705.

¹² Moore, *International Law Digest*, Vol. VI, p. 709.

¹³ Moore, *International Law Digest*, Vol. VI, p. 289.

¹⁴ Annual message, Dec. 7, 1909, *Congressional Record*, Vol. 45, Part I, p. 28.

and throughout his official utterances on the subject he stressed the political importance of these loans in China. This phase of the transactions was also duly appreciated by America's European partners and unfortunately the political aspects became the chief object of the negotiations between the interested governments. After an unedifying exchange of diplomatic correspondence, the Hukuang railway was divided into sections between officials and markets of the nationalities of the respective lenders for construction purposes and the furnishing of materials. The Currency Reform Loan negotiations developed into a sharp diplomatic struggle over the appointment by the lending powers on the basis of nationality of inspectors in the salt gabelle, advisers in the Bureau of Audits and a Director of Foreign Loans, after they had vetoed the Chinese appointment of "neutral" officials to these positions on the basis of ability irrespective of nationality. Telegraphing on this subject to the Department of State on February 21, 1913, Minister Calhoun said: "To my mind it is no longer a question of friendly international cooperation to help China but a combination of big powers with common interests to accomplish their own selfish political aims." Secretary of State Knox replied on February 27, 1913, deprecating the introduction of political issues into the loan negotiations. "Experience has shown," he said, "the wisdom of surrounding such loans to China with adequate safeguards of supervision, not only as a reasonable measure of protection for the interests of the lenders and of the ultimate bondholders but also as a necessary means of upholding China's credit and avoiding the possible consequences of default in her financial obligations, which are already pressing. The Department has, however, consistently held that the Chinese Government must be left free to accept or decline a loan on the conditions proposed, and the American group of bankers interested in the loan negotiations have likewise held the same views."¹⁵

Such was the status of the negotiations when President Wilson assumed office on March 4, 1913. Under the working of the American political system, all national policies, including foreign policy, are dependent upon the views of the administration for the time being in power, and the American group very naturally desired to know whether the new administration would continue to regard them as an indispensable instrumentality of governmental policy in the Far East or whether they would be relegated to the non-preferred position of ordinary private citizens holding a contract with a foreign government. The fact that their contract had been negotiated at the suggestion of the government and through its diplomatic support could not raise it to the solemnity and legal effect of a treaty binding upon the government regardless of the administration in power, as in the case of the loan to Santo Domingo under the Receivership Convention with the United States Government.

¹⁵ Foreign Relations, 1913, pp. 164, 166.

Therefore, on the day following the inauguration of President Wilson, the American group addressed a letter to the Secretary of State, referring to the Chinese loan negotiations "upon which this group entered originally at the request of the Department of State, and in which we have continued with its approval and under its direction," and respectfully requested that the Department let the group know its wishes as to the future conduct of the negotiations. On March 18, 1913, President Wilson issued to the press "a declaration of the policy of the United States with regard to China," in which, after reciting that the American bankers "declared that they would continue to seek their share of the loan under the proposed agreements only if expressly requested to do so by the government," he stated that "the administration has declined to make such request, because it did not approve the conditions of the loan or the implications of responsibility on its own part which it was plainly told would be involved in the request." President Wilson's statement continued:

The conditions of the loan seem to us to touch very nearly the administrative independence of China itself; and this administration does not feel that it ought, even by implication, to be a party to those conditions. The responsibility on its part which would be implied in requesting the bankers to undertake the loan might conceivably go to the length in some unhappy contingency of forcible interference in the financial, and even the political, affairs of that great oriental state, just now awakening to a consciousness of its power and of its obligations to its people. The conditions include not only the pledging of particular taxes, some of them antiquated and burdensome, to secure the loan, but also the administration of those taxes by foreign agents. The responsibility on the part of our government implied in the encouragement of a loan thus secured and administered is plain enough and is obnoxious to the principles upon which the government of our people rests.

President Wilson's statement was immediately communicated to the interested governments and the American group promptly announced its withdrawal from the loan.¹⁶ Thus through the action of President Taft's administration in urging China to admit the European bankers to the Currency Reform Loan which China had sought to place solely in the United States, and of President Wilson, in withdrawing American support after the loan had been negotiated with the Sextuple Consortium, China was thrown upon the very lenders whom she had sought to avoid and was being pressed with conditions of a foreign loan which the *Peking Daily News* of March 25, 1913 stated China would never accept unless under compulsion.¹⁷ A few days after the publication of President Wilson's statement, namely, March 25, 1913, the Chinese Minister called at the State Department and

¹⁶ The complete statement of President Wilson, together with the statement of the bankers announcing their withdrawal from the loan, is printed in an editorial in this JOURNAL, Vol. 7, 1913, pp. 335-341.

¹⁷ Foreign Relations, 1913, p. 175n.

informed the Acting Secretary of State that he "had received special instructions from President Yuan Shih Kai to make formal expression of the thanks of the people of China and of their appreciation of the just and magnanimous attitude of President Wilson indicated in the public statement recently issued by him which was accepted by the Chinese Government as an expression of sincere friendship toward the Republic and people of China."¹⁸

A few months later Mr. E. T. Williams, the American Chargé d'Affaires at Peking, in a despatch dated July 11, 1913, requested instructions as to the attitude to be taken by the Legation towards financial transactions between American capitalists and the Chinese Government. He stated that he had several times recently been approached by prominent Chinese officials and others with inquiries for American financiers who might be willing to make loans to the Chinese Government for industrial or administrative purposes, and that in discussing these problems with American business men he had been asked whether the American Government would give its support to these enterprises. Mr. Williams explained that many industrial enterprises in China are either wholly or partially owned by the government and that nearly all railway construction is carried out under contracts with the government. Participation in such enterprises, Mr. Williams said, concerns also the future of American trade "because concessions obtained now will secure for the nations obtaining them the Chinese market for the machinery and other supplies needed in the development of the concessions. Once supplies of a certain type are introduced they tend to become standard and the sale of other sorts becomes very difficult." The central and provincial governments are often in need of money for administrative purposes which can only be obtained by loans secured upon the national or local taxes. "It is evident," Mr. Williams stated, "that financial transactions between American citizens and the Chinese Government are altogether different from such transactions between individuals or business firms. When difficulties occur in connection with the latter, suits may be brought by American plaintiffs in Chinese courts in which our consular representatives have a right to sit as associates to see that justice is done and the treaty rights of their nationals protected; and in cases where Americans are defendants the American consular courts or the United States Court for China have jurisdiction. Should the Chinese Government, however, default in its engagements with

¹⁸For this and other documents relating to the withdrawal of the American group from the loan, see *Foreign Relations*, 1913, pp. 167 *et seq.* For an official Chinese criticism of the terms of this loan, see translation of the letter of the Chinese Minister of Finance to the Sextuple Group, dated March 11, 1913, p. 169; see especially also the despatch of Mr. Williams, American Chargé at Peking, Oct. 21, 1913, regarding the reluctance of China to place a further loan with the quintuple group and her desire to place such a loan with American capitalists, p. 189.

American financiers, it might become necessary to take possession of the revenues pledged as security for the loans made and this, as the President points out, might require 'forcible interference in the financial and even the political affairs of China.'"¹⁹

In response to Mr. William's request for instructions, Secretary of State Bryan replied on September 11, 1913, that the Department "is extremely interested in promoting, in every proper way, the legitimate enterprises of American citizens in China and in developing to the fullest extent the commercial relations between the two countries." "This Government," he said, "expects that American enterprise should have opportunity everywhere abroad to compete for contractual favors on the same footing as any foreign competitors;" but, he added, "this Government is not the endorser of the American competitor, and is not an accountable party to the undertaking. . . . If wrong be done toward an American citizen in his business relations with a foreign government, this government stands ready to use all proper effort toward securing just treatment for its citizens. This rule applies as well to financial contracts as to industrial engagements." The Secretary reaffirmed the Department's instructions of October 21, 1905, above referred to, and referred the legation to Mr. Olney's instructions of December 19, 1896, above quoted, as a clear statement of the general principle which the Department considered still generally applicable.

Although the President of China thanked President Wilson for withdrawing his support from the Six-Power Loan, this was not an indication that the Chinese Government did not desire the investment of American capital. "The withdrawal of the United States left China without a disinterested friend to help her in her dealings with other powers," says M. Joshua Bau, a recent Chinese writer. "With the absence of the United States there was no moral leader among the Powers who could uphold the doctrine of equal opportunity of trade and the integrity of China. As a result, the other Powers fell into their old practice of international struggle for concessions."²⁰

On October 21, 1913, the American Chargé reported that he had been approached by the Premier and three other cabinet ministers on the sub-

¹⁹ *Foreign Relations*, 1913, p. 183.

There is another element in the foreign loan situation in China which, though disagreeable to mention, has to be taken into consideration. In a despatch of Sept. 25, 1913, the American Chargé at Peking referred to the extravagance and corruption of the government. "The opinion generally expressed by foreigners in Peking," he said, "is that there is far more corruption under the Republic than under the Manchu régime. There are many more officials to be satisfied now, and the commissions upon contracts that are approved are necessarily much larger. In one instance it is credibly stated to have been thirty-five per cent." (*Foreign Relations*, 1913, p. 188.)

²⁰ *The Foreign Relations of China*, by M. Joshua Bau, pp. 67 and 171. (Revell Co., New York.)

ject of a loan by American capitalists to the Chinese Central Government. "The Premier regretted," he said, "that the American bankers had withdrawn from participation in the currency loan, that the currency of the country was in a very bad condition, and that its reform was urgently needed. He said the Chinese Government would be glad if the American Government would give such assurances to American capitalists as would induce them to resume the lending of money to China." The American Chargé expressed the opinion that "undoubtedly, the Chinese would like competition between American financiers and those of the quintuple group, since the latter might in such case be induced to moderate their demands."²¹

No official notice, however, appears to have been given to these appeals, and in 1916, when a Chicago banking house advanced to China \$5,000,000 for administrative purposes and sent a copy of the contract to the State Department for a statement of its policy respecting such loans, Mr. Lansing simply replied "that the Department of State is always gratified to see the Republic of China receive financial assistance from the citizens of the United States, and that it is the policy of the Department, now as in the past, to give all proper diplomatic support and protection to the legitimate enterprises abroad of American citizens."²²

The entry of the United States into the war, however, produced a radical change in the attitude of the State Department upon the subject. Feeling that proper means should be placed at the disposal of China to equip herself so as to be of more assistance in the war, says a statement issued by the Department on July 30, 1918, "a number of American bankers, who had been interested in the past in making loans to China and who had had experience in the Orient, were called to Washington and asked to become interested in the matter. The bankers responded very promptly and an agreement has been reached between them and the Department of State which has the following salient features:

"First, the formation of a group of American bankers to make a loan or loans and to consist of representatives from different parts of the country.

"Second, an assurance on the part of the bankers that they will co-operate with the Government and follow the policies outlined by the Department of State.

"Third, submission of the names of the banks who will compose the group for approval by the Department of State.

"Fourth, submission of the terms and conditions of any loan or loans for approval by the Department of State.

"Fifth, assurances that, if the terms and conditions of the loan are accepted by this Government and by the Government to which the loan is made, in order to encourage and facilitate the free intercourse between

²¹Foreign Relations, 1913, p. 191.

²²New York Times, Nov. 17, 1916.

American citizens and foreign States which is mutually advantageous, the Government will be willing to aid in every way possible and to make prompt and vigorous representations and to take every possible step to insure the execution of equitable contracts made in good faith by its citizens in foreign lands.”

The Department stated that negotiations were in progress with the governments of Great Britain, Japan and France to secure their co-operation and the participation by bankers of their countries in equal parts in any loan which may be made.²³

In the correspondence, which has now been published, leading up to the agreement between the State Department and the bankers,²⁴ it appears that the latter informed Secretary Lansing that it would be necessary “if now and after the war we are successfully to carry out the responsibilities imposed upon us by our new international position, that our Government should be prepared in principle to recognize the change in our international relations, both diplomatic and commercial, brought about by the war,” and they expressed the conviction that no Chinese loan could be placed in this country “unless the Government would be willing at the time of issue to make it clear to the public that the loan is made at the suggestion of the Government.” Mr. Lansing replied, on July 9, 1918, that “with the consequent expansion of our interests abroad there must be considered also the element of risk which sometimes enters into the making of loans to foreign governments and which is always inseparable from investments in foreign countries where reliance must be placed on the borrowers’ good faith and ability to carry out the terms of the contract. This Government realizes fully that condition.” In the same letter, however, Mr. Lansing said that “this Government would be opposed to any terms or conditions of a loan which sought to impair the political control of China or lessened the sovereign rights of that Republic.” Later, in response to a specific request of the British Foreign Office as to the meaning of this statement, Mr. Lansing explained, in a memorandum of October 8, 1918, that it “had reference only to the future activities of the American group” and “that the United States Government did not mean to imply that foreign control of the collection of revenues or other specific security by mutual consent would necessarily be objectionable, nor would the appointment under the terms of some specific loan of a foreign adviser.”

²³ *New York Times*, July 30, 1918, p. 13.

²⁴ The documents were made public by the State Department on March 30, last, but their bulkiness forbade their textual reprinting. They have now been issued by the Carnegie Endowment for International Peace in a pamphlet of 78 printed pages, in an information series published upon questions relating to the Conference on the Limitation of Armament and Problems of the Pacific. Pamphlet No. 40, Division of International Law.

The proposals of Secretary Lansing for the formation of the consortium met with the approval of the British, French and Japanese Governments, and the negotiation by the international bankers of the terms of the consortium took place at Paris coincident with the meeting of the Peace Conference. A draft agreement was drawn up on May 12, 1919 and submitted for the approval of the respective governments. Two obstacles arose, however, which prevented the prompt approval of the draft bankers' agreement.

The first obstacle related to the measure of diplomatic support to be accorded to the banking groups by their respective governments. The draft agreement recited that the groups "are entitled to the exclusive diplomatic support of their respective governments." In Mr. Lansing's memorandum of October 8, 1918, outlining his plan to the other governments, he stated that it was intended to include in the membership of the national groups all financial firms of good standing interested in administrative and industrial loans to China and that the interested governments should withhold their support from independent financial operations without previous governmental agreement. Mr. Lansing stated that thirty-one banks representative of all sections of the country had joined the American group. The British Foreign Office, in its note of March 17, 1919, accepted this proposal and offered exclusive support to the British group on condition that it was enlarged in such a manner as to render it sufficiently representative of the financial houses of good standing interested in Chinese loans to prevent criticism on the ground of exclusiveness.

On June 7, 1919, however, the British Government informed the State Department that it could not extend its exclusive support to the British group "as the latter have hitherto failed to comply with the conditions on which alone His Majesty's Government are prepared to guarantee exclusive official support."²⁵

The French Government also expressed its inability to extend exclusive support to the French Group. Its reasons may best be expressed by quoting from the note of the French Foreign Office to the American Ambassador at Paris, dated June 20, 1919, as follows:

You are no doubt aware that both in France and England the groups whilst admitting new members have for various reasons excluded firms with important interests in China. New enterprises may, moreover, at

²⁵ In a letter of June 4, 1919, the Hongkong and Shanghai Banking Corporation, when informing the Foreign Office that they considered the British group as at present constituted fully representative of British finance, stated that "they are well content with the general measure of government support which they at present enjoy and have no desire to change it for any other. Their sole object in assenting to the conditions attached to exclusive support was to further the policy of His Majesty's Government with regard to the American consortium proposal, of which exclusive support was a postulate." For the full correspondence between the British group and the Foreign Office, see Miscellaneous, No. 9, pp. 12-36.

any time spring up desirous of carrying on business in China, but not disposed to enter the consortium just as the consortium may possibly not be disposed to admit them. Now, there is nothing in French law which permits the limitation of the individual activity of private persons nor that of financial and industrial companies, nothing which permits the restriction of their activities in China or in any other part of the world. It follows that the consortium, not having united and being indeed practically speaking unable to unite all the French interests which operate or which may some day desire to operate in the territory of the Chinese Republic, could not claim the exclusive support of the French Government. The principles of our public law as well as parliamentary opinion would not allow us to grant it a sort of monopoly. Besides, you are aware that at the time of the formation of the old consortium it was not accorded any privilege in law or in fact, and its founders simply relied on the financial strength of the organization, the resources of the participating concerns and the co-ordination of their efforts to obtain for themselves the preponderating position in the Chinese market, which they have not ceased to enjoy. It is on these intrinsic elements of success, rather than on legal privileges, that the new consortium should base its prospects.²⁶

The American State Department seems to have held itself competent and to have been willing to guarantee exclusive support to the American group, but in order to obtain the approval of France and Great Britain it proposed and they accepted the following formula in lieu of the provision objected to:

The Governments of each of the four participating groups undertake to give their complete support to their respective national groups members of the Consortium in all operations undertaken pursuant to the resolutions and agreements of the 11th and 12th of May, 1919, respectively, entered into by the Bankers at Paris. In the event of competition in the obtaining of any specific loan contract the collective support of the diplomatic representatives in Peking of the four Governments will be assured to the Consortium for the purpose of obtaining such contract.

A more serious obstacle to the approval of the draft agreement arose from the attempt of Japan to exclude certain parts of Manchuria and Mongolia from the operation of the consortium. Such exclusion was proposed at Paris on June 18, 1919 by the representative of the Japanese group and was confirmed by the Japanese Embassy at Washington on August 27, 1919, which offered to accept the draft agreement of May 12, 1919 with the following proviso: "Provided, however, that the acceptance and confirmation of the said resolution shall not be held or construed to operate to the prejudice of the special rights and interests possessed by Japan in South Manchuria and Eastern Inner Mongolia."

The attempt to exclude these regions was immediately protested by the American State Department and the British Foreign Office. Secretary Lansing, in a memorandum of October 28, 1919, stated that the

²⁶ Miscellaneous No. 9, 1921, pp. 27-28.

American Government "can only regard the reservation in the form proposed as an intermixture of exclusive political pretensions in a project which all the other interested Governments and groups have treated in a liberal and self-denying spirit and with the purpose of eliminating so far as possible such disturbing and complicating political motives; and it considers that from the viewpoint either of the legitimate national feeling of China or of the interests of the Powers in China it would be a calamity if the adoption of the Consortium were to carry with it the recognition of a doctrine of spheres of interest more advanced and far-reaching than was ever applied to Chinese territory even when the break-up of the Empire appeared imminent." Mr. Lansing pointed out that the inter-group agreement of May 12 specified that only those industrial undertakings are to be pooled upon which substantial progress has not been made and that "if Japan's reservation is urged with a view solely to the protection of existing rights and interests, it would seem that all legitimate interests would be conserved if only it were made indisputably clear that there is no intention on the part of the Consortium to encroach on established industrial enterprises."

The Japanese Government replied on March 2, 1920 denying that its proposal was prompted by a "desire of making any territorial demarcation involving the idea of economic monopoly or of asserting any exclusive political pretensions or of affirming a doctrine of any far-reaching sphere of interest in disregard of the legitimate national aspirations of China, as well as of the interests possessed there by the Powers concerned," but asserting that "the regions of South Manchuria and Eastern Inner Mongolia which are contiguous to Korea stand in very close and special relation to Japan's national defense and her economic existence," that "enterprises launched forth in these regions often involve questions vital to the safety of the country," and that these circumstances "compelled the Japanese Government to make a special and legitimate reservation indispensable to the existence of the State and its people." The Japanese memorandum then proposed a new formula of acceptance of the consortium which stated that "in matters relating to loans affecting South Manchuria and Eastern Inner Mongolia which in their opinion are calculated to create a serious impediment to the security of the economic life and national defense of Japan, the Japanese Government reserve the right to take the necessary steps to guarantee such security," and appended a list of Japanese undertakings and options to be excluded from the activities of the Consortium. An identical memorandum was presented to the British Foreign Office on March 16, 1920. Since the replies to these memoranda have been accepted by Japan as an integral part of its acceptance of the consortium, the relevant portions of the American reply on March 16, 1920 is quoted textually. After stating that the right of national self-preserva-

tion is one of universal acceptance which does not require specific formulation and "that the recognition of that principle is implicit in the terms of the notes exchanged between Secretary Lansing and Viscount Ishii on November 2, 1917," the American memorandum states:

This Government therefore considers that by reason of the particular relationships of understanding thus existing between the United States and Japan, and those which, it is understood, similarly exist between Japan and the other Powers proposed to be associated with it in the Consortium, there would appear to be no occasion to apprehend on the part of the Consortium any activities directed against the economic life or national defense of Japan. It is therefore felt that Japan could with entire assurance rely upon the good faith of the United States and of the other two Powers associated in the Consortium to refuse their countenance to any operation inimical to the vital interests of Japan.

Similar assurances were given by Great Britain on March 19, 1920, and by France on May 25, 1920.

With reference to the specific undertakings in Manchuria and Mongolia which Japan proposed to exclude from the operations of the consortium, both the United States and Great Britain filed objections and proposed that this question be settled in negotiations between representatives of the American and Japanese banking groups.

In memoranda dated April 3 and May 8, 1920, to the Department of State, and April 14 and May 10, 1920, to the British Foreign Office, Japan, after stating that she put forward her proposal "in order to make clear the particular position which Japan occupies through the facts of territorial propinquity and of her special vested rights," accepted the foregoing assurances in lieu of her formula, and authorized the Japanese banking group to enter the consortium on the same terms as the other groups and to settle with those groups the concrete questions as to which of the options Japan possesses in Manchuria and Mongolia were to be excluded from the consortium. The negotiations between the two groups were concluded at Tokio on May 11, 1920 and resulted in the following agreement:

1. That the South Manchurian Railway and its present branches, together with the mines which are subsidiary to the railway, do not come within the scope of the Consortium;
2. That the projected Taonanfu-Jehol Railway and the projected railway connecting a point on the Taonanfu-Jehol Railway with a seaport are to be included within the terms of the Consortium Agreement;
3. That the Kirin-Huining, the Chengchiatun-Taonanfu, the Changchun-Taonanfu, the Kaiyuan-Kirin (via Hailung), the Kirin-Changchun, the Sinminfu-Moukden and the Ssuping kai-Chengchiatun Railways are outside the scope of the joint activities of the Consortium.

So far as the published correspondence discloses, the first communication to the Chinese Government regarding the consortium was made on September 28, 1920, in a joint note of the American, British, French

and Japanese Legations at Peking, setting forth its scope and object. China was told that "in the course of 1918 the United States Government informed the other three governments in question of the formation in the United States of America of an American group of bankers for the purpose of rendering financial assistance to China;" that "the principles underlying the formation of the American group were that all preferences and options for loans to China held by any members of this group should be shared by the American group as a whole and that future loans to China having a governmental guarantee should be conducted in common as group business, whether these loans were for administrative or for industrial purposes;" and that the financial groups of the four Powers had agreed upon a draft arrangement embodying *inter alia* the principles of the American proposals, which arrangement "relates to existing and future loan agreements involving the issue for subscription by the public of loans having a Chinese Government guarantee subject to the proviso that existing agreements for industrial undertakings upon which substantial progress has been made may be omitted from the scope of the arrangement." The measure of support to be given by the respective Governments to their national groups or to the consortium as a whole was stated in substantially the same language as that hereinbefore given, and China was informed that while the new arrangement was not intended to interfere with any of the rights of the old consortium, the proposals envisaged a reconstruction and enlargement of it "so as to meet the larger needs and opportunities of China in a spirit of harmony and of helpfulness rather than of harmful competition and self-interest."

The final text of the consortium agreement was signed at New York on October 15, 1920 and transmitted to the Chinese Government on January 13, 1921. A Belgian banking group was admitted to membership after signature of the agreement. The text of the agreement is printed in the Supplement.²⁷

The new consortium differs from the old in one important particular, namely, in that it does not relate to a specific loan but applies with certain exceptions to public loans held or to be obtained by the members. In all operations undertaken pursuant to the consortium the respective governments pledge their "complete support." The meaning of the term quoted is not defined. It is evidently more than the "good offices" which every government is ordinarily prepared to extend to any of its citizens in contract claims.²⁸ The expression doubtless must mean that the gov-

²⁷P. 4.

²⁸"Good offices" consist merely in a direction to the diplomatic agent "to investigate the subject, and if you shall find the facts to be as represented, you will secure an interview with the Minister for Foreign Affairs and request such explanations as it may be in his power to afford." (Moore, *International Law Digest*, Vol. VI, p. 710.)

ernments will be prepared to make official diplomatic representations. In this respect the promise of the American State Department goes beyond the traditional practice of the Department prior to Mr. Taft's administration. It will be noted that the support pledged is not limited to *diplomatic* support. It may mean, therefore, complete support of any kind necessary to protect the operations of the consortium. Such an interpretation would, of course, include military support. That an American Secretary of State is competent to commit the Government to such an undertaking in behalf of private contracts has been denied by Secretaries Marcy and Day, as above set forth.

There apparently is no intention of official participation in the securing of loans for the consortium; but in the event of competition the governments will lend the support of their diplomatic representatives. To this extent, the action of the State Department under the new consortium will be comparable to the diplomatic support exerted by Mr. Taft's administration to secure American participation in the Hukuang Railway Loan.

To the appointment of foreign officials in China for purposes of supervision, which became such an objectionable feature under the old consortium as to lead to American withdrawal, the concurrence of the State Department has been given in advance in the correspondence and diplomatic notes of Mr. Lansing leading up to the formation of the new consortium. A measure of control to prevent the abuse of this dangerous expedient is retained by the requirement in the agreement with the bankers that they will follow the policies outlined by the Department of State and submit the terms and conditions of each loan for the approval of the Department. It will be recalled that the negotiations of the American group in the old consortium were carried on with the approval and under the direction of the Department of State, but the department, representing only one of a partnership of six, found itself entangled in embarrassing political negotiations from which it was only extricated by an inglorious withdrawal from the whole transaction.

A few months after the new consortium was formed another change of administration took place in Washington, and on March 10, 1921, the representatives of the American group addressed a letter to the new Secretary of State, inquiring if the policy of the Department in encouraging American interests in the assistance of China through the operations of the international consortium was in accord with his views and received his approval. The letter stated that the operations of the consortium are in no way designed to interfere with the private initiative of Americans or other nationals in China, that it does not propose to undertake any mercantile, industrial or banking projects, but plans only to help China in the establishment of her great public utilities, such as the build-

ing of her railways, canals, etc., thereby assisting in stabilizing China economically and financially, and making that field a safer one for the initiative of our citizens in private enterprises in commerce, industry, etc.

In reply, Secretary Hughes, on March 23, 1921, informed the American group "that the principle of this cooperative effort for the assistance of China has the approval of this Government, which is hopeful that the Consortium constituted for this purpose will be effective in assisting the Chinese people in their efforts towards a greater unity and stability, and in affording to individual enterprises of all nationalities equality of commercial and industrial opportunity and a wider field of activity in the economic development of China."